

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE ENROLLED ACT No. 445

AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-2-5-1, AS AMENDED BY P.L.24-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The following definitions apply throughout this chapter:

(1) "Limited criminal history" means information with respect to any arrest, indictment, information, or other formal criminal charge, which must include a disposition. However, information about any arrest, indictment, information, or other formal criminal charge which occurred less than one (1) year before the date of a request shall be considered a limited criminal history even if no disposition has been entered.

(2) "Bias crime" means an offense in which the person who committed the offense knowingly or intentionally:

(A) selected the person who was injured; or

(B) damaged or otherwise affected property;

by the offense because of the color, creed, disability, national origin, race, religion, or sexual orientation of the injured person or of the owner or occupant of the affected property or because the injured person or owner or occupant of the affected property was associated with any other recognizable group or affiliation.

(3) "**Care**" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children



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less than eighteen (18) years of age.

(4) "Council" means the security and privacy council created under section 11 of this chapter.

(5) "Criminal history data" means information collected by criminal justice agencies, the United States Department of Justice for the department's information system, or individuals. The term consists of the following:

- (A) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.
- (B) Information regarding an offender (as defined in IC 5-2-12-4) obtained through sex offender registration under IC 5-2-12.
- (C) Any disposition, including sentencing, and correctional system intake, transfer, and release.

(6) "Certificated employee" has the meaning set forth in IC 20-7.5-1-2.

(7) "Criminal justice agency" means any agency or department of any level of government whose principal function is the apprehension, prosecution, adjudication, incarceration, probation, rehabilitation, or representation of criminal offenders, the location of parents with child support obligations under 42 U.S.C. 653, the licensing and regulating of riverboat gambling operations, or the licensing and regulating of pari-mutuel horse racing operations. The term includes the Medicaid fraud control unit for the purpose of investigating offenses involving Medicaid. The term includes a nongovernmental entity that performs as its principal function the:

- (A) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders;
- (B) location of parents with child support obligations under 42 U.S.C. 653;
- (C) licensing and regulating of riverboat gambling operations; or
- (D) licensing and regulating of pari-mutuel horse racing operations;

under a contract with an agency or department of any level of government.

(8) "Department" means the state police department.

(9) "Disposition" means information disclosing that criminal proceedings have been concluded or indefinitely postponed.

(10) "Inspection" means visual perusal and includes the right to make memoranda abstracts of the information.

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~~(9)~~ **(11)** "Institute" means the Indiana criminal justice institute established under IC 5-2-6.

~~(10)~~ **(12)** "Law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.

(13) "National criminal history background check" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

(14) "Noncertificated employee" has the meaning set forth in IC 20-7.5-1-2.

~~(11)~~ **(15)** "Protective order" has the meaning set forth in IC 5-2-9-2.1.

(16) "Qualified entity" means a business or an organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care or care placement services, including a business or an organization that licenses or certifies others to provide care or care placement services.

~~(12)~~ **(17)** "Release" means the furnishing of a copy, or an edited copy, of criminal history data.

~~(13)~~ **(18)** "Reportable offenses" means all felonies and those Class A misdemeanors which the superintendent may designate.

~~(14)~~ **(19)** "Request" means the asking for release or inspection of a limited criminal history by noncriminal justice organizations or individuals in a manner which:

(A) reasonably ensures the identification of the subject of the inquiry; and

(B) contains a statement of the purpose for which the information is requested.

(20) "School corporation" has the meaning set forth in IC 20-10.1-1-1.

(21) "Special education cooperative" has the meaning set forth in IC 20-1-6-20.

~~(15)~~ **(22)** "Unidentified person" means a deceased or mentally incapacitated person whose identity is unknown.

SECTION 2. IC 5-2-5-5, AS AMENDED BY P.L.10-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b), on request, law enforcement agencies shall release or allow inspection of a limited criminal history to noncriminal justice organizations or individuals only if the subject of the request:

(1) has applied for employment with a noncriminal justice

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organization or individual;

(2) has applied for a license and criminal history data as required by law to be provided in connection with the license;

(3) is a candidate for public office or a public official;

(4) is in the process of being apprehended by a law enforcement agency;

(5) is placed under arrest for the alleged commission of a crime;

(6) has charged that his rights have been abused repeatedly by criminal justice agencies;

(7) is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;

(8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;

(9) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or non-public school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;

(10) is being investigated for welfare fraud by an investigator of the division of family and children or a county office of family and children;

(11) is being sought by the parent locator service of the child support bureau of the division of family and children; or

(12) has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Possession of child pornography (IC 35-42-4-4(c)).

(F) Vicarious sexual gratification (IC 35-42-4-5).

(G) Child solicitation (IC 35-42-4-6).

(H) Child seduction (IC 35-42-4-7).

(I) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited

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criminal history by and release a limited criminal history to the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for **any of the purpose of following purposes:**

- (A) Employment ~~and with a state or local governmental entity.~~

- (B) Licensing.

- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 3. IC 5-2-5-13, AS AMENDED BY P.L.10-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization that:

- (1) has been in existence for at least ten (10) years; and
- (2) either:
 - (A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization; or
 - (B) is a home health agency licensed under IC 16-27-1.

(b) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the division of family and children or a county office of family and children if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 12-17.4.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, ~~(as defined in IC 20-10.1-1-1);~~ **special education cooperative**, or non-public school (as defined in IC 20-10.1-1-3) as part of a background investigation of an **employee or** adult volunteer for the school corporation, **special education cooperative**, or non-public school.

SECTION 4. IC 5-2-5-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15. (a) The department is designated as the authorized agency to receive requests for, process, and disseminate the results of national criminal history background checks that comply with this section and 42 U.S.C. 5119a.**

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(b) A qualified entity may contact the department to request a national criminal history background check on any of the following persons:

(1) A person who seeks to be or is employed with the qualified entity. A request under this subdivision must be made not later than three (3) months after the person is initially employed by the qualified entity.

(2) A person who seeks to volunteer or is a volunteer with the qualified entity. A request under this subdivision must be made not later than three (3) months after the person initially volunteers with the qualified entity.

(c) A qualified entity must submit a request under subsection (b) in the form required by the department and provide a set of the person's fingerprints and any required fees with the request.

(d) If a qualified entity makes a request in conformity with subsection (b), the department shall submit the set of fingerprints provided with the request to the Federal Bureau of Investigation for a national criminal history background check for convictions described in IC 20-5-2-8. The department shall respond to the request in conformity with:

(1) the requirements of 42 U.S.C. 5119a; and

(2) the regulations prescribed by the United States attorney general under 42 U.S.C. 5119a.

(e) This subsection applies to a qualified entity that:

(1) is not a school corporation or a special education cooperative; or

(2) is a school corporation or a special education cooperative and seeks a national criminal history background check for a volunteer.

After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department shall make a determination whether the applicant has been convicted of an offense described in IC 20-5-2-8 and convey the determination to the requesting qualified entity.

(f) This subsection applies to a qualified entity that:

(1) is a school corporation or a special education cooperative; and

(2) seeks a national criminal history background check for the purposes determining whether to employ or continue the employment of a certificated employee or a noncertificated employee of a school corporation or an equivalent position with a special education cooperative.

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After receiving the results of a national criminal history background check from the Federal Bureau of Investigation, the department may exchange identification records concerning convictions for offenses described in IC 20-5-2-8 with the school corporation or special education cooperative solely for purposes of making an employment determination. The exchange may be made only for the official use of the officials with authority to make the employment determination. The exchange is subject to the restrictions on dissemination imposed under P.L.92-544, (86 Stat. 1115) (1972).

SECTION 5. IC 20-5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) A school corporation, **including a school township**, shall adopt a policy concerning criminal history information for individuals who:

- (1) apply for:
 - (A) ~~noncertificated~~ employment with the school corporation; or
 - (B) employment with an entity with which the school corporation contracts for services; ~~or~~
- (2) seek to enter into a contract to provide services to the school corporation; **or**
- (3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;**

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, **including a school township**, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section may require any of the following:

- (1) The school corporation, **including a school township**, may request limited criminal history information concerning each applicant for noncertificated employment **or certificated employment** from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.
- (2) **Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request under IC 5-2-5 limited criminal history information or a national criminal history background check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school**

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corporation may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 5-2-5-1(1)) to the school corporation.

~~(3)~~ **(4)** Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 5-2-5;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 5-2-5-1(6)) that does not appear on the limited criminal history.

~~(4)~~ **(5)** Each applicant for noncertificated employment **or certificated employment** may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly questions asked under this subdivision is grounds for termination of the ~~noncertificated~~ employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in subdivision (4)(A) and (4)(B). The school corporation either may require that the individual or the contractor comply with the procedures described in subdivision (4)(C) or (5). Failure to comply with subdivisions (4) and (5), as required by the school corporation, is grounds for termination of the contract.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible for all costs associated with obtaining the limited criminal history.

(d) Information obtained under this section must be used in accordance with IC 5-2-5-6.

SECTION 6. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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